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February 7, 1995

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

William E. Kennard, General Counsel
Federal Communications Commission
1919 M Street, N.W., Room 224
Washington, D.C. 20554
Mail Stop Code #1400

Via Hand Delivery

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Dear Mr. Kennard:

We have reviewed the Commission's broadband PCS competitive bidding rules and have questions concerning the interpretation of the requirements in four areas. First, Section 24.709(b)(5) provides that at least 15 percent of the applicant's total equity must be held by qualifying investors, either unconditionally or in the form of options exercisable, at the option of the holder, at any time and at any exercise price equal to or less than the market value at the time the applicant files its short form application. Given the capital intensive nature of PCS, it may be necessary for an applicant to raise additional capital through future rounds of financing after the filing of the Form 175 application. At the same time, there must be a mechanism in place to protect qualifying control group members from a dilution of their interests. Thus, we request clarification as to whether or not an applicant may issue qualifying members of the control group step-up warrants for a certain amount of the applicant's total equity at the time of the Form 175 filing which grant such qualifying investors the right to purchase additional shares at the new price during future rounds of financing so as not to dilute their interests. We recognize that in no event may the qualifying investors' equity be diluted to less than 15 percent of the applicant's total equity within three years following the date of the initial license grant.

Second, Section 24.720(l)(i) states that for purposes of the affiliation rules, both spouses are deemed to own or control or have the power to control interests owned or controlled by either of them, unless they are subject to a legal separation recognized by a court of competent jurisdiction. However, Paragraph 189 of the Fifth Report and Order in PP Docket No. 93-253 (released July 15, 1994) states that the Commission shall not adopt any special rules or presumptions to determine whether women-owned applicants exercise independent control of their firms. We seek confirmation that women with extensive experience in investment banking

No. of Copies rec'd 1
List A B C D E

William E. Kennard

February 7, 1995

Page 2

and valuation consulting and who serve on the applicant's board of directors would qualify as "qualifying" investors in a women and minority-owned applicant even if their husbands serve as officers of the applicant, such as Vice-President and Chief Operating Officer. We recognize that such women must assume the full responsibilities of stockholders and directors. We further recognize that the assets of the spouses would be attributable for purposes of determining compliance with the financial caps.

Third, Paragraph 81 of the Fifth Memorandum Opinion and Order in PP Docket 93-253 (released November 23, 1994) clarified that non-majority or non-voting shareholders in an applicant may be given a decision-making role, through supermajority provisions or similar mechanisms, in major corporate decisions that fundamentally affect their interests as shareholders without being deemed to be in de facto control. The Commission stated that such decisions generally include: (1) issuance or reclassification of stock; (2) setting compensation for senior management; (3) expenditures that significantly affect market capitalization; (4) incurring significant corporate debt or otherwise encumbering corporate assets; (5) sale of major corporate assets; and (6) fundamental changes in corporate structure, including merger or dissolution. We request clarification that non-majority shareholders also may participate on the applicant's bid committee as well as have a decision-making role with respect to approving the applicant's operating budget and annual capital budget consistent with the Commission's de facto transfer of control policies.

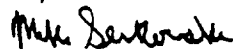
Finally, we request confirmation that the Commission's anti-collusion rules would permit a designated entity ("Entity A") to invest in Entity B's control group even though Entity A has a partnership agreement with Entity C in another region and there is one state in which Entity B and Entity C will be overlapping bidders, provided Entity B forms two companies -- Applicant I that would bid in the overlapping state without the inclusion of Entity A in the control group and Applicant II that would bid in all other markets with the inclusion of Entity A in the control group, and provided also that Applicants I and II act independently to avoid disclosure of market-specific information to Entity A. In addition, we request clarification of what disclosures and certifications must be included in the Form 175 applications in such a situation. For example, Section 1.2105(c)(4)(i) states that a holder of a non-controlling attributable interest in an entity may acquire an ownership interest in, form a consortium with, or enter into a joint bidding arrangement with, other applicants for licenses in the same geographic area after the filing of the short form applications, provided that the attributable interest holder certifies to the FCC that it has not communicated and will not communicate with any party concerning the bids or bidding strategies of more than one of the applicants in which it holds an attributable interest or with which it has a consortium or joint bidding arrangement, and which have applied for licenses in the same geographic area. While such investments would be made prior to the filing

William E. Kennard
February 7, 1995
Page 3

of the Form 175 application and Entity A would not have an attributable interest in more than one applicant for licenses in the same geographic area, we request clarification as to whether or not the Commission's rules would require Entity A to make such certifications to the agency.

We appreciate your consideration. Please do not hesitate to contact me at (202) 429-7249 with any questions concerning these matters.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "R. Michael Senkowski".

R. Michael Senkowski

RMS:blw
cc: Rosalind K. Allen
Donald H. Gips